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Report to Congressional Requesters

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AVIATION SAFETY

FAA Has Improved Its Removal Procedures for Pilot Examiners

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Resources, Community, and
Economic Development Division

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September 8, 1989

The Honorable Norman Y. Mineta
Chairman, Subcommittee on Surface
Transportation
Committee on Public Works and
Transportation
House of Representatives

The Honorable James L. Oberstar
Chairman, Subcommittee on Aviation
Committee on Public Works and
Transportation
House of Representatives

As a first step in responding to Congressman Mineta's October 11, 1988, overall request regarding the Federal Aviation Administration's (FAA) ability to provide adequate aviation safety oversight, we reviewed FAA's pilot licensing procedures. We will address FAA's actions to update aviation medical standards and the aviation safety inspection program in subsequent reports. Although FAA is responsible for ensuring pilot certificates are only issued to safe and competent pilots, it has delegated most of its authority and responsibility for issuing certificates to private, non-FAA personnel called pilot examiners (PE). It is critical to aviation safety that FAA ensure that PEs only issue certificates to qualified pilots. This report addresses FAA's process for removing PEs who are not satisfactorily carrying out their responsibilities.

Results in Brief

We found that FAA lacked adequate guidance to ensure a PE's due process rights were protected during removal. As a result, FAA had experienced difficulty in removing PEs who used unacceptable pilot certification practices. These unacceptable practices, such as improper flight testing, seriously impair FAA's ability to ensure that only safe and competent pilots receive pilot certificates. We could not identify the magnitude of the problem because FAA district offices do not maintain this type of PE data. However, because of the potential safety implications involved, we brought this matter to the attention of FAA's Chief Counsel who concurred with our findings. In June 1989, FAA issued revised procedures for removing PEs who are not performing satisfactorily. FAA believes the revised procedures will help resolve the problem.

Background

The 1,433 FAA-designated PEs are official representatives of the FAA Administrator and, for a fee paid by the student, administer oral and flight tests and issue pilot applicants a certificate to operate an aircraft. In addition to issuing virtually all initial or private pilot certificates, some PEs are authorized to administer the flight test to those pilots who want to obtain or renew a certified flight instructor certificate. Flight instructors provide basic training to persons seeking a pilot license, advanced instruction to pilots upgrading their licenses, and required biennial proficiency checks for all pilots. Consequently, PEs are a critical part of FAA's pilot training and certification process.

FAA's 9 regional offices and 90 flight standards district offices are responsible for designating PEs, monitoring PEs work, and reviewing annually PEs' certification. The district offices are also responsible for initiating action to remove a PE's authority when they believe the PE's activities are jeopardizing air safety.

FAA Has Experienced Difficulty Removing PEs

FAA regional and district offices have encountered difficulties removing PEs because FAA did not have adequate procedures to follow during the removal process. Office managers and supervisors told us the major problem they encountered in administering the PE program is their inability to remove a PE who is not performing satisfactorily. These officials said that, based on their experience, most PEs are performing adequately, but they do experience difficulties removing a PE who challenges FAA's decision.

According to FAA's Director, Flight Standards Service (responsible for overall management of the PE program), since 1982, the courts have ruled that FAA did not have adequate procedures to ensure a PE's due process rights were protected during the removal process. Because of this, FAA has lost court cases where the PE challenged FAA's removal of their designation. In these cases, the courts ruled that FAA did not provide the PEs with the required due process under the Constitution and Administrative Procedure Act, including adequate notice and an opportunity to respond to charges. As a result, FAA has been reluctant to remove problem PEs.

For example, in August 1986, one district office removed a PE's designation because the PE was not satisfactorily performing his duties. FAA said that the PE, on two occasions, issued certificates to pilots who were involved in accidents—with three fatalities—within a few weeks after

the certificates were issued. The National Transportation Safety Board cited pilot error as the cause of both accidents. According to FAA, the PE also jeopardized a pending FAA enforcement case by publicly disclosing restricted information. The PE's attorney threatened to sue FAA, alleging that the district office did not provide the PE with a due process hearing prior to removing the PE's designation. In June 1987, FAA's Office of Chief Counsel settled the case by agreeing to restore the PE's designation provided the PE agreed not to litigate. This PE continues to issue over 300 pilot certificates annually.

In a January 1989 case, a PE sued FAA employees, as individuals, alleging violations of procedural due process. In this case, FAA removed the PE-designation because the PE was not conducting flight tests in accordance with required standards. While the court recognized the importance of FAA's interest in maintaining safety, it ruled that FAA cannot violate a PE's due process rights. The court stated that FAA did not comply with certain minimal due process standards when removing the PE's designation. According to the court, FAA did not:

- present specific detailed charges,
- provide timely notice of the charges, and
- provide an adequate hearing.

The court ruled FAA violated the PE's due process rights. The PE has not sought to regain his designation.

We could not determine the number of PEs FAA has attempted to remove or how many challenged the removal, because flight standards district offices do not maintain such data. Nevertheless, because of the safety implications, we brought these examples and issues to the attention of FAA's Chief Counsel. He agreed that FAA needed to take corrective action and promptly began developing new procedures for inspectors to follow in removing problem PEs.

New Procedures Improve FAA's Removal Process for PE's

FAA issued its new PE removal procedures in June 1989. They are more specific and comprehensive than the previous ones. FAA is now required to provide:

- a written notice to the PE stating the specific reasons for the proposed termination;
- the PE an opportunity to respond in writing or in person;
- a written record of any meeting; and
- a written decision stating the reasons and justification for the decision.

The procedures also provide that the PE receive an opportunity to have the district office's decision reviewed by the regional office and notification that the removal action can be appealed to the United States Court of Appeals. In cases involving fraud or safety-related emergencies, the procedures provide for immediate suspension of the PE's authority.

Furthermore, FAA has instructed its regional office staffs to ensure that PEs who are not performing satisfactorily are identified and, if necessary, removed. According to FAA guidance, regional offices should monitor district offices to determine whether they are (1) adequately supervising PE's compliance with all FAA requirements, (2) properly and completely documenting PE deficiencies, and (3) following FAA guidance to ensure appropriate procedures are followed when removing PEs.

Conclusions

After we informed FAA headquarters about the PE removal problems, the agency quickly issued new procedures to remedy the situation. While we cannot predict whether courts will find that these procedures satisfy due process concerns, the new procedures do address issues raised in court decisions. This should, in turn, increase FAA's ability to ensure that safe and competent pilots receive pilot certificates. Because FAA headquarters acted quickly to resolve this problem, we are not making recommendations in this report.

To address the issues discussed in this report, we reviewed documents and interviewed FAA's Chief Counsel and Director and other officials in the Flight Standards Service Office at FAA headquarters in Washington, D.C. In addition, we interviewed regional Flight Standards Division managers in Chicago, Illinois; Jamaica, New York; Los Angeles, California; and Seattle, Washington; and 10 Flight Standards District Office managers, as well as supervisors and inspectors, in Long Beach, Los Angeles, Riverside, and San Diego, California; Denver, Colorado; Scottsdale, Arizona; Teterboro, New Jersey; and Seattle and Chicago. We also spoke to FAA's regional counsels in Los Angeles, Seattle, and Kansas City, Missouri. Our review was conducted between February and May 1989 in accordance with general accepted government auditing standards.

We discussed the report's content with FAA's Chief Counsel, the Director of Flight Standards Service, and other cognizant program officials, and their comments have been included where appropriate. However, as requested by your offices, we did not obtain official agency comments on a draft of this report.

As arranged with your offices, unless you publicly announce its contents earlier, we plan no further distribution of this report until 15 days from the date of this letter. At that time, we will send copies to the Secretary of Transportation; the Administrator, FAA; and other interested parties. We will also make copies available to others upon request.

If you have any questions about this report, please contact me at (202) 275-1000. Major contributors to this report are listed in appendix I.

K. G. Mead

Kenneth M. Mead
Director, Transportation Issues

Major Contributors to This Report

Resources, Community, and Economic Development Division, Washington, D.C.	Victor S. Rezendes, Associate Director, Transportation Issues Thomas J. Barchi, Assistant Director Robert W. Shideler, Assignment Manager
Los Angeles Regional Office	Samuel S. Van Wagner, Evaluator-in-Charge Troy G. Hottovy, Evaluator
Office of the General Counsel	Jackie A. Goff, Senior Attorney

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